



OFFICE OF THE POLICE COMMISSIONER
ONE POLICE PLAZA • ROOM 1400

January 8, 2016

Memorandum for: Deputy Commissioner Trials

Re: **Police Officer William Pierce**
Tax Registry No. 944896
62 Precinct
Disciplinary Case No. 2013-10647

The above named member of the service appeared before Assistant Deputy Commissioner Amy J. Porter on July 9, 2014, charged with the following:


DISCIPLINARY CASE NO. 2013-10647

1. Said Police Officer William Pierce, on or about June 6, 2012, at approximately 2230 hours, while assigned to the 62nd Precinct and on duty, in the vicinity of [REDACTED], did wrongfully use force against Minor A, in that he grabbed and held [REDACTED] by the collar, forcibly pushed him against a wall and lifted him off of the ground without legal justification.

P.G. 203-11

USE OF FORCE

In a Memorandum dated January 28, 2015, Assistant Deputy Commissioner Amy J. Porter found Police Officer Pierce Guilty of the sole Specification in Disciplinary Case No. 2013-10647. Having read the Memorandum and analyzed the facts of this matter, including the video evidence, I disapprove the Guilty finding for Police Officer Pierce. Therefore, I have determined that Police Officer Pierce is Not Guilty of the sole Specification in Disciplinary Case 2013-10647.


William J. Bratton
Police Commissioner

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POLICE DEPARTMENT

January 28, 2015

MEMORANDUM FOR: Police Commissioner

Re: Police Officer William Pierce
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P.G. 203-11 – USE OF FORCE

The Civilian Complaint Review Board (CCRB) was represented by Paul Scotti, Esq., Respondent was represented by John Tynan, Esq.

Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Respondent is found Guilty.

INTRODUCTION

There is no dispute that on June 6, 2012 in the area of [REDACTED], Respondent did restrain Minor A for at least two minutes. Respondent was working as a plainclothes anticrime officer with his partner, Police Officer Aniello Napoli. Minor A, the complainant, was 15 years old at the time. The issue is whether there was legal justification for the force that Respondent used. Minor A and Respondent tell different stories about what happened before Respondent restrained Minor A.

SUMMARY OF EVIDENCE PRESENTED

The CCRB's Case

CCRB stated that because his parents did not want him to attend, Minor A was not present to testify. Instead, CCRB submitted the recording and transcript of Minor A's interview with CCRB on July 24, 2012. (Civilian Complaint Review Board Exhibit [CCRBX] 1A and 1B).

CCRB also submitted into evidence a video taped recording of the encounter between

Respondent and Minor A (CCRBX 2). It was not disputed that this video tape

showed the end of the encounter between Respondent, Respondent's partner, Napoli, and Minor A and that there was a gap in the video. This missing footage meant that the events that led up to Respondent restraining Minor A could not be seen. There was no audio portion to the video.

Hearsay Statement of Minor A

On June 6, 2012 at around 10 p.m. Minor A was standing with about 12 friends on the sidewalk of [REDACTED] Two undercover officers approached the group in a black car. Minor A indicated that one officer was white and that the officer driving the car was black.

The officers told Minor A and his friends "to get out from the street." (CCRBX 1B, Pg. 5) Minor A and his friends started walking when the black undercover officer [Respondent] said to Minor A, "[W]alk away." Minor A had already begun walking and told the officer, "Yo, sir, I'm walking, you know, don't you see me?" Minor A said the black officer did not ask him questions about what he was doing there. He just asked Minor A for his identification. Minor A said, "I don't have it with me, I have at home."

Then, Minor A said, "he just grabbed me, like two, two undercover just grabbed me on my shirt - - and just pulled me on the . . . someone was holding my hand and he just grabbed me on my neck. So he was holding me for like two minutes." (CCRBX 1B, Pg. 6) When asked if the white officer was holding his neck, Minor A responded, "somebody was holding." Minor A asked the black officer, "Why you doing this?" Minor A said, "he just grabbed me and just boom, like choked me. . . . And the white guy was holding my hand."

Minor A said he was held for two minutes against the wall. When asked how hard he was held by the neck, Minor A responded, "[I]t was hard, it was hard getting up. . . . I couldn't breathe." Then he said he could breathe "a little bit" while the officer was holding him.

Minor A told the officer five or six times, "Please let me go." The officer told him, "No, I'll let you go, I'll let you go when I want, when I feel like it." Minor A said the officer had one hand on him.

Minor A did not know why the officer let him go when he did. After they let Minor A go, the officers walked to their car and drove away. Minor A stated that other than answering the officer's question about his ID, asking to be let go, and saying he was walking, he did not say anything else to either officer.

Minor A said all his friends were standing right there watching what happened. After the officers left, "some guy" asked Minor A if he wanted to sue the officers. Minor A replied, "[Y]eah sure." Minor A called his father and the "guy" called the police.

Minor A said that he got a scratch from the black officer's hand being around his neck. About a week after the incident, Minor A went to [REDACTED] where no injuries were discovered.

During the interview when asked if Minor A was filing a law suit against the officer, Minor A responded, "[Y]eah, yeah sure. That's why we came here." Mr. Levavi then explained to Minor A that this investigation of the officers was unrelated to the law suit.

Respondent's Case

Respondent and his partner, Napoli, told a different version of events. Their testimonies were consistent with each other.

Respondent and Napoli were parked where they were because of "a string of robberies" in this Brooklyn neighborhood. Minor A approached the officers' car and asked "[W]hat the fuck is the problem?" Napoli got out of the car to speak to Minor A and, according to Respondent, direct Minor A off the street onto the sidewalk. Then Minor A "chopped" or "pushed" Napoli's hand away.

To protect his partner, Respondent intervened by grabbing Minor A by the shoulders to restrain him. When Minor A grew more irate, Respondent reacted by "holding him a little bit tighter" to "contain him a little bit more." Minor A was facing Respondent and at one point he was holding Respondent's arm trying to remove Respondent from "containing him." During that time, Respondent asked Minor A his name and age. Minor A did not answer, but continued to curse and say, "Get the fuck off me." Respondent asserted, "At the rate he was at, to talk to him, there was no way of talking to him to try to calm him down." Respondent agreed that after his hands were on Minor A, he did not tell Minor A to calm down. For the entire time Respondent held him, Minor A was irate and screaming profanities at him.

After "containing" Minor A for about three minutes, Respondent released him and walked away. Respondent released Minor A because he and Napoli had received a call for another job, a robbery. Respondent indicated that he knew about this other job because his partner told him. When he let Minor A go, Respondent and Minor A did not say anything to each other.

Respondent maintained he did not touch Drilon's neck or throat, did not force Minor A against the wall, and did not lift him off of the ground. Other than ask him for his name and age, Respondent did not say anything to Minor A. Respondent did not grab Minor A just because of the language Minor A was using.¹ Respondent could have issued Minor A a summons for disorderly conduct and could have arrested him for not having any identification. Instead, Respondent used his discretion in not arresting Minor A because, Respondent testified, "he seemed to be a young man just angry at the time, so I decided not to just ruin his life by putting him in cuffs and putting him in jail."

ANALYSIS

Respondent is charged with wrongfully using force against Minor A, in that he grabbed and held Minor A by the collar, forcibly pushed him against a wall and lifted him off the ground without legal justification.

The complainant stated that he was walking down the street when the officers approached him, asked him for his ID, and then just grabbed him and held him for two minutes against the wall. Indeed, CCRB did not rely on the complainant's statement about how he was stopped and did not charge Respondent with stopping Minor A without sufficient legal authority. The videotape, which was the most serious evidence against Respondent, did not show what happened between Respondent and Minor A when the officers first approached Minor A. This is because there is a gap in the videotape. Because Minor A did not testify and was not subject to cross-examination, CCRB was unable demonstrate that the officers did not have sufficient legal authority to stop Minor A.

¹ Napoli did not see Respondent grab Minor A's neck collar, push Minor A into the wall, or lift him off of the ground by his collar.

Thus, the Court credits the consistent testimonies of Respondent and his partner, Napoli, about how and why the officers approached Minor A. The two officers parked where they did because "they were having a string of robberies in the neighborhood." They asked some teenagers to move a double-parked car. Minor A came up to the officers in their car and asked Napoli twice, "[W]hat the fuck's the problem?" Napoli then asked Minor A to step onto the sidewalk to get out of the street. Minor A "became irate and started cursing even more."

Napoli took his shield out from underneath his shirt, got out of the car to try to speak to Minor A and direct him toward the sidewalk. Respondent also got out of the car. Napoli put his hand toward Minor A to guide him away from the street and towards the sidewalk. Minor A then "smacked"² Napoli's hand. Napoli did not respond. Respondent "used force to grab his [Drilon's] shoulders," Respondent said, "so nothing else would happen between him and my partner."

Respondent had reason to initially restrain Minor A. However, based on the videotape, the Court finds that Respondent did not need to maintain this hold on Minor A for the amount of time that he did. Most troubling are the discrepancies between Respondent's claims under cross-examination and what the videotape shows.

Respondent agreed that when he first put his hands on Minor A had not made any aggressive movements toward him. Respondent indicated that he had to hold Minor A for so long because "[h]e continued to flail his arms and he continued to be irate." Respondent testified, "He tried to flail his arms like to get me off of him." Respondent also maintained, Minor A "[t]ried to wiggle , wiggling his body" and he would "wiggle his

²Respondent later said "push."

arms." Respondent claimed that Minor A was continuing to flail his arms as he was facing Respondent with his back against the wall. According to Respondent, Minor A was flailing his arms the entire time that Respondent was holding him.

Respondent said he did not grab "so much the collar" of Drilon, but that "[m]y hands went towards the V of his shirt." His hand, he claimed, never rose towards Minor A's neck and throat. Respondent said that Minor A "moved himself towards the wall" and denied pushing Minor A into the wall.

Respondent acknowledged that Minor A did not try to punch him and did not try to use his knee to knee Respondent in the groin, abdomen or the leg. Minor A did not try to kick him. Respondent claimed that Minor A turned himself around.

Respondent said he had difficulty controlling Minor A for a period of two to three minutes. He claimed that Minor A was irate and screaming profanities at him the entire time he held him. Respondent agreed that in these types of situations a police officer would generally handcuff the person for the officers' safety. Although Napoli was standing beside him, Napoli never helped. Respondent acknowledged that there was nothing that stopped his partner from helping.

The video contradicts these statements by Respondent. Although Respondent maintained that Minor A continued to flail his arms throughout the entire time that Respondent restrained him, at no point during the video do we see Minor A flailing his arms. Respondent can be seen, particularly in the last minute of the encounter, continuing to hold Minor A who is not resisting.

While Respondent claimed that he never pushed Minor A against the wall, Respondent can be seen holding Minor A against the wall to restrain him. Although it is not clear on the video, Respondent's hands appear to be near Minor A's throat.

Respondent admitted that Drilon never tried to use his knee to knee Respondent and did not try to punch him. Respondent also claimed that he never had to lift Minor A off the ground to contain him. Yet the video shows Minor A's knee and legs lifting in the air. The Court can only conclude that if Minor A did not try to use his own knee to strike at Respondent, then Respondent must have forcibly lifted Minor A off the ground.

Two to three minutes holding someone is a long time to keep someone in custody, as Respondent admitted. Respondent agreed that the only reason for holding someone for so long is to subdue the person, to either protect yourself or your partner from some kind of physical attack or to effect an arrest. However, at the time of the incident, Respondent weighed about 300 pounds. Minor A was 15 years old, weighing about 150 pounds. In spite of the weight advantage Respondent had over Minor A, which is obvious in the video, Respondent claimed that he had trouble restraining Minor A. Yet, Respondent acknowledged that his partner never came to his assistance. Indeed, the tape shows Napoli standing beside Respondent, calmly watching and not showing any signs of concern for Respondent's safety. At one point, Napoli has his hand in his pocket, at another point Napoli steps back and looks around.

In addition to his statements which are not supported by the videotape, Respondent made another claim that was not credible. Respondent agreed that he could have used his discretion to handcuff and arrest Minor A. Instead, Respondent explained, one of the reasons he did not arrest Minor A was because he got a call for a robbery. Yet,

Respondent's memo book showed that the last entry for his tour was this incident with Minor A. No other job is noted after this one.

When viewed in conjunction with the testimony of Respondent and his partner, Respondent's actions in the videotape were excessive. Thus, Respondent had no legal justification for holding Minor A for the length of time that he did. Accordingly, Respondent is found Guilty.

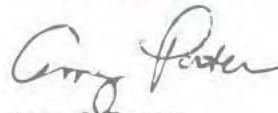
PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 NY 2d 222 (1974).

Respondent was appointed to the Department on July 9, 2007. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

The CCRB attorney recommended an eight day penalty. Under the circumstances, this recommendation is appropriate. Therefore, it is recommended that Respondent forfeit eight vacation days.

Respectfully submitted,



Amy J. Porter

Assistant Deputy Commissioner – Trials



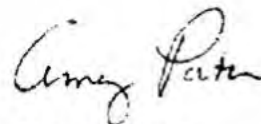
POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER WILLIAM PIERCE
TAX REGISTRY NO. 944896
DISCIPLINARY CASE NO. 2013-10647

Respondent's last three annual evaluations were as follows: he received an overall rating of 4.5 "Highly/Extremely Competent" in 2013 and 2012 and a 4.0 "Highly Competent" in 2011. He has three medals for Excellent Police Duty and one medal for Meritorious Police Duty. [REDACTED]

[REDACTED] He has no prior formal disciplinary record.

For your consideration.



Amy J. Porter
Assistant Deputy Commissioner – Trials